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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1965

~~No. 1~~ 1042

JULIAN G. CARR

Petitioner

vs.

THE UNITED STATES

Respondent

Petition for Writ of Certiorari to the Court of Claims of the United States

---

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INDEX

	Page
Opinion of the lower Court	1
Jurisdiction of this Court	2
Questions presented for review	2
Statute involved	2
Statement of the Case	3
Argument	7
Conclusion	17
Appendix	App. 1-2

TABLE OF CITATIONS

	Page
U. S. v. American Trucking Association, 60 S. Ct. 1095	13
U. S. v. Magnolia Petroleum Co., 276 U.S. 160	14
Winfree v. Northern Pacific Railway Co., 227 U.S. 296, 33 S.Ct. 273, 57 L.Ed. 578	15
Lemly v. U. S., 75 F.Supp. 284	16

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Petitioner, Captain Julian G. Carr, prays that a writ of certiorari issue to review an order of the Court of Claims of the United States wherein motion for summary judgment was entered in favor of the government, pursuant to an interpretation of Amendatory Section 415 to the Career Compensation Act of 1949.

OPINION OF THE LOWER COURT.

No opinion was rendered by the Court of Claims.

Order in dismissal of plaintiff's original petition after oral argument, and denial of his motion for rehearing can be found in the certified transcript of record filed herewith. (R. 50, R. 71)*

*Numerals following the "R" designation refer to pages contained in the transcript of record.

JURISDICTION OF THIS COURT,

The order presented for review was dated and entered June 18, 1965, by the Court of Claims of the United States. On October 15, 1965 that Court denied petitioner's motion for rehearing and to alter judgment. On December 23, 1965 this Court granted a sixty day extension of time in which to file certiorari petition.

This Court has jurisdiction to review the order complained of by writ of certiorari, under interpretations of Article 1, Section 7, Constitution of the United States (R. 38, 39)—The Congressional Purpose is plain and the effect has not been given according to its terms. (R. 8, 9, Chap. 15)

QUESTIONS PRESENTED FOR REVIEW.

1. Did Congress intend that Amendatory Section 415 to the Career Compensation Act of 1949 should reverse the entire statute, and that in violation to the most emphatic rules of law, its provisions should apply prospectively for some and retrospectively for another?

2. Can the actual letter of an amendatory act defeat its own clear purpose and render whole saving clauses of the original act inoperative?

STATUTE INVOLVED.

The Career Compensation Act of 1949. 63 Stat. 816
Section 415

"Any member who, on the *effective date* of

this Act, *is* a hospital patient and who within six months of the *effective* date of this Act is retired as a result of a physical disability growing out of the injury or disease for which he *was* hospitalized as of *the date of enactment* of this Act, may elect to receive retirement benefits computed under the laws in effect on the date preceding *the date of enactment* of this Act." Emphasis supplied.

Amendatory Section 415 64 Stat. 158, 37 USCA 285

"Any member who, on October 1, 1949, was a hospital patient and who, prior to January 1, 1951, is retired as the result of a physical disability growing out of the injury or disease for which he was hospitalized, may elect to receive retirement benefits computed under the laws in effect on September 30, 1949."

Saving Sections 515(a), 519, and 520 will be found in the Appendix.

STATEMENT OF CASE.

HISTORY

Petitioner initiated his suit in the Court of Claims after four years' effort in which hope for administrative relief was exhausted.

The sole question is one of Congressional Intent, which requires a determination of whether two calendar

dates, those of "September 30, 1949" and "October 1, 1949", which have transposed Amendatory Section 415 to the Career Compensation Act of 1949, represent inept Congressional language.

FACTS.

Petitioner, while serving on active duty as an officer in the Air Force of the United States was hospitalized on October 10, 1949, while suffering from a liver disease which led to his retirement on June 30, 1950. He was not permitted to elect under Amendatory Section 415 which saved a law providing 75 percent retirement pay, and which was in effect on the date of his retirement proceedings, but was retired with 30 percent base pay. Disability was "total" and "permanent". (R. 70)

Petitioner was without knowledge of the actual date of enactment of the statute, until May, 1960. He immediately thereafter sought administrative relief. (R. 49)

The Career Compensation Act of 1949 was approved by the President on October 12, 1949. In the closing chapter of the Act "October 1, 1949" was selected as the "effective date" on which the new pay increases began to accrue to every member of the uniformed services. *"October 1, 1949" was selected before the bill was presented to the President — at a time when "the date of enactment" was unknown and while the Act was subject to veto.* (R. 8)

Section 415 saved a law which was concurrently repealed by the Act. Repeal and preservation both took effect at the same moment of approval on October 12, 1949 (R. 38). The old retirement law which was saved by Section

415 is discussed in the following extract from the legislative history:

> "The second major change deals with retirement for physical disability. For a great many years it has been the practice to retire an officer who is found physically incapable of active military service, and pay him a compensation equal to 75 percent of his base and longevity pay. *No differentiation was made as to the actual degree of disability, so long as it was sufficient to constitute an incapacity for active service.*" (P. 2092, US Code Congressional Service, First Session, 81st Congress, 1949). Emphasis supplied.

The law discussed above was repealed because of its abuse (R. 45). Section 415 saved the entitlement so that it was not disturbed by the Career Compensation Act, but remained in effect and intact for the following six months, just as it had existed since 1861. Section 415 protected every officer who was a hospital patient on "the date of enactment", and who was suffering from an injury or disease which led to his retirement. The government has denied petitioner's eligibility under the old law, asserting that it required a "percentage" of disability (R. 67). The fact that the old law required no percentage of disability was chiefly responsible for its repeal (R. 45).

Amendatory Section 415 extended the retirement privilege for an additional nine months, because the original section had not been duly "promulgated" (R. 7). Amendatory Section 415 is retroactive and it has been construed by the Court of Claims in keeping with its exact letter.

The provisions of Section 411 were not brought to the attention of the Court of Claims. This chapter is necessary in reply to the government's statement that Section 415 pertained to members "theretofore retired" (R. 25). In the words of Congress Sec. 411 stated in part:

> "MEMBERS OR FORMER MEMBERS HERETOFORE RETIRED FOR PHYSICAL DISABILITY
>
> "Section 411
>
> "Any member or former member of the uniformed services heretofore retired by reason of physical disability and now receiving or entitled to receive retired or retirement pay— may elect within the five-year period following the effective date of this title— to qualify for disability retirement pay under the provisions of this Act and, dependent on his qualification, shall be entitled to receive either the disability retirement pay or the disability severance pay prescribed in this title—".

Section 519 protected the entitlements of every member indicated above throughout "the date of enactment"— "notwithstanding the provisions of this Act" (appendix). Under the provisions of Section 411 every officer who had been retired either on or before October 12, 1949, and was receiving under the old 75 per cent retirement law, was given a period of *five years* in which he could elect to either keep his old pay or take under the Career Compensation Act.

ARGUMENT.

As part of an act which will not permit retroactive construction or the disturbance of any old law, prior to its "date of enactment", Amendatory Section 415 to the Career Compensation Act of 1949 has been construed retroactively, and permitted to take away on "October 1, 1949", a law which Congress took extreme care to save from repeal on "October 12, 1949". Provisions of the original act applied equally and alike to every member of the uniformed services, and petitioner will rest his claim on the law and the principles of law fairly embraced in the contents of pages 69 and 70 of the enclosed certified transcript—that the Court will not permit an act to look into the past for two conflicting and irreconcilable purposes—to give every member of the services unaccrued pay, and to retroactively destroy a vested pay entitlement.

Amendatory Section 415 which has no coherence or support outside the narrow confines of its own text, has been construed by the Court of Claims with strict adherence to its exact retroactive letter. Amendatory words have been accepted without any regard to the Congressional Purpose, or to the impossible significance of these words when they are considered as part of an entire act.

The old 75 percent retirement law which was repealed by the Act was kept alive, and remained in full force and effect for certain officers. Section 415 protected every officer whose injury or disease had been officially recognized at the time the old law was withdrawn; who was an actual hospital patient on "the date of enactment", and suffering from an injury or disease which was to end the patient's military career and bring about his retirement

within six months thereafter. Congress realized that such officers were already lost to the services, and that each had indeed already qualified under the old law before it was taken away, except for the formality of a retirement which was inevitable. In every respect, petitioner qualified under the provisions of Section 415 during the six months while it was in effect (R. 70).

The bill was approved by the President and enacted into law on October 12, 1949. This Court and the Court of Claims, in interpretations of the Constitution, have held that the time of approval is the earliest moment on which such an act can take effect (R. 38). "October 1, 1949", is a date which is backward in time and one which is of necessity under the Act or its Amendment, *a retroactive date.* One cannot look backward in time to a prospective date, as counsel for government has argued (R. 24 & 25).

Amendatory Section 415 extended the law which had been prospectively saved from repeal on October 12, 1949, for nine months into the future or throughout the entire year of 1950, thereby assuring eligible members ample time in which to exercise the retirement privilege (R. 7). Simultaneously, *the Amendment reaches back into the past, and requires that a member must have been hospitalized on "October 1, 1949"*— a retroactive date theretofore restricted to the start of "increases" (R. 8) or "pay, allowances or benefits" (R. 61).

October 12, 1949 was "the date of enactment" of the statute and the date it began to exist. Section 415 and other saving clauses distinctly *contrast* "the date of enactment" with the "effective date". The latter date pertained

to pay increases only. *The Amendatory Act faces both the future, January 1, 1950, and the past, October 1, 1949.* The Amendment is prospective for some, but has retrospectively destroyed for petitioner, a vested pay entitlement. Counsel for government has stated that a vested right cannot pertain to the future (R. 24). This opinion is not shared in the law (R. 63).

Section 415 gave officers who had been hospital patients on "the date of enactment" or on October 12, 1949, an election to retire under the law as it had existed on "the date preceding the date of enactment" or on October 11, 1949. Here, an election was possible because the laws *varied* on these two dates. Amendatory Section 415 gave an officer who was a hospital patient on "October 1, 1949" an election to retire under the law as it had existed on "September 30, 1949". The old laws were in complete force and effect on both of these dates and the Career Compensation Act was not in existence. An *election* is impossible and the offer is absurd (R. 55, 56).

(2) The Amendatory Act did not alter the original purpose of this clause, and it could not affect other saving chapters of the statute (R. 48). The following extract expresses a cardinal rule of law:

82 CJS, Statutes, Section 384, P. 869

> "Amendments are to be construed together with the original act to which they relate as constituting one law".

Saving Section 520 had no function other than to assure the preservation of every old pre-existing law which

had been saved from repeal on "*the date of enactment*", to "*be continued in full force and effect for such entitlement and for such a time as such entitlement may exist*" (R. 62 and appendix). *This saving clause insures the prospective and vested nature of the entitlement which was extended by Amendatory Section 415.* The judgment of the Court of Claims which upheld the Amendment, did so *in express and direct violation to the vital and unambiguous instruction of Saving Section 520.* (Appendix) In the face of this saving clause, the government has successfully argued that no old disability retirement pay was saved by the new act (R. 67), and that its saving clauses pertained only to members "theretofore retired" (R. 25). This is to deny the plain meaning of a clear text.

The judgment complained of disregards the careful and detailed legislative history, which has discussed at length the purposes of Section 415 and Amendatory Section 415 (R. 7) — a purpose confirmed by Senator Butler when he introduced Section 415 (R. 29).

The obvious reasons for the conflicting calendar dates of Amendatory Section 415 are identical with the glaring and *admitted* errors which stand today, unquestioned in the USCA (R. 59, 60), and petitioner's step-by-step explanations have not been heard (R. 58, 59, 60, 61).

The Act, its history and the Congressional Record will indicate that the "effective date" of "October 1, 1949" was restricted to "increases" (R. 8), and "pay, allowances or benefits" (R. 61). The very sentence wherein "October 1, 1949" was selected, carefully pointed to Saving Section 515, and directed that it should "take effect" on "the date of enactment" (R. 61). "General Saving Subsection

515(a)" is: "A PROVISION TO RETAIN PRESENT COMPENSATION". "Present Compensation", is compensation under the old laws. This crucial saving clause which prohibits the loss of any entitlement prior to "the date of enactment", and forbids all retroactive construction, has been dismissed by the government as "not relevant here" (R. 12). Congressional language has been quoted above and in the appendix since Section 515 in the USCA is incorrect (R. 59, 60)—reflecting an error identical with that of the following Congress that wrote Amendatory Section 415.

Counsel for government has told the Court of Claims that Section 415 did *not* save an old right, but "created a new and fortuitous and prospective right—" (R. 25).

Section 415 created nothing new. The right it saved was 88 years old (R. 53, 54). October 1, 1949 was not fortuitous, but carefully selected (R. 8), and not prospective but retrospective by a period of eleven days.

The government has quoted from the remarks of Senator Butler at the time Section 415 was introduced on September 26, 1949:

> "The purpose— is to give an officer — an opportunity to make his final settlement either under the terms of the present law (the old law) or under the terms of the new act." (R. 15).

Later:

> "No provision of the 1949 act permitted disability retirement under the 'old law'" (R. 67).

The counsel for government stated that plaintiff's contrary assertions were "fallacious" (R. 67).

On July 21, 1964, counsel for government told the Court of Claims:

> "Plaintiff is not entitled to the election privilege because he was not a hospital patient on October 1, 1949". (R. 16)

Later, on August 17, 1964:

> "— nor would he have acquired any right to retirement had he been hospitalized on October 1, 1949". (R. 26).

The judgment under protest was written in disregard to every rule of law contained in the following paragraphs:

C. J. S. STATUTES, VOLUME 82, SECTION 325, PAGE 613

> "In construing a statute, the spirit of the enactment must be considered and the statute should, if possible, be construed in accordance therewith. In pursuance of the general object of giving effect to the intention of the legislature the courts are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter thereof, it being generally recognized that whatever is within the spirit of the statute is within the statute although it is not within the letter thereof, while that which is within the letter, although not with-

in the spirit, is not within the statute. Effect will be given he real intention even though contrary to the letter of the law.

"The rule of construction according to the spirit of the law is especially applicable where adherence to the letter would result in absurdity, injustice, or where adherence to the letter of the law would lead to contradictions, or defeat the plain purpose of the act, or where the provisions were inserted through inadvertence.

"In following this rule, words may be modified or rejected and others substituted, or words and phrases may be transposed. So the meaning of general language may be restrained by the spirit or reason of the statute, and may be construed to admit implied exceptions. Apparent inaccuracies and mistakes in the mere verbiage or phraseology will be overlooked to give effect to the spirit of the law."

The following opinion could have been written for this particular case, 60 S.Ct. 1059:

U. S. v. AMERICAN TRUCKING ASSOCIATION

"In interpreting statutes, courts should construe the language so as to give effect to the intent of Congress, and there is no invariable rule for the discovery of that intent. . . .

"To take a few words from their context in a

statute and with them thus isolated to attempt to determine their meaning does not contribute greatly to discovery of legislative intent, particularly in a law drawn to meet many needs of a major occupation.

"There is no more persuasive evidence to the purpose of a statute than the words used by the legislature, and plain meaning of such words may be followed when they are sufficient in and of themselves to determine the purpose but court may look beyond such words to the purpose when the plain meaning leads to absurd or futile results, or any unreasonable result plainly at variance with policy of legislature as a whole."

In a case in point this Court has reversed the Court of Claims. Referring again to that opinion, the following will be found (R. 40), 276 U.S. 160:

U. S. v. MAGNOLIA PETROLEUM CO.,
Supreme Court

"Statutes are not to be given retrospective effect or construed to change the status of claims fixed in accordance with earlier provisions unless the legislative purpose to do so plainly appears."

This Court quoted with approval the following language used by the Court of Appeals in giving reason why the statute there in question should not have a retroactive application. Other extracts from this same case appear on page 40 of the certified enclosure, 227 U.S. 296, 33 S.Ct. 273, 57 L.Ed., 578:

"WINFREE v. NORTHERN PACIFIC RAILWAY CO.

> "It is a statute which permits recovery in cases where recovery could not be had before, and takes away from the defendant defenses which formerly were available, — defenses which, in this instance, existed at the time when the contract of service was entered into and at the time when the accident occurred."

Amendatory Section 415 denies recovery where recovery could be had before, and takes away from petitioner an entitlement which formerly was available — in this instance, an entitlement which existed at the time when the contract of service was entered into, and for six months after the disability occurred.

The principles of law wherein petitioner claims entitlement under the Career Compensation Act are no less elementary than the reasons for our bicameral system, and for provisions of the Constitution which require that the President shall first approve a bill before it can take effect (R. 38, 39). These reasons are identical to the refusals offered by every court of law in giving retroactive meaning to a conflicting statute, or in giving effect to an act which would retroactively disturb a vested right, unless the intent to do so is clear.

The statutes are unaltered and petitioner's rights are no less clear today, than in 1950 when he was wrongfully denied his entitlement under the law. This action is not in the nature of a continuing claim but concerns a vested right which time has not impaired or diminished.

Petitioner quotes from Page 63 of the certified enclosure:

BLACK LAW DICTIONARY, PAGE 1735 — VESTED RIGHTS

"which cannot be interfered with by retroactive laws, or interests which it is proper for the state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice —Immediate of fixed right to present or future enjoyment and one that does not depend on an event that is uncertain."

— — —

LEMLY v. U.S. 75 F.Supp. 284 Ct. Cl.

From words and phrases, permanent edition: " . . . an employee . . . has vested interest in retirement pay which cannot be destroyed, weakened, or departed from by subsequent legislation".

Section 415 saved an old retirement law that protected petitioner and every officer in his category who was a hospital patient on October 12, 1949 — the "earliest possible moment" on which the Act could take effect (R. 38). Amendatory Section 415 prolonged the same right for some, but retroactively withdrew it from petitioner on October 1, 1949, thereby cutting off this saved entitlement before the Act came into existence. The Amendatory Act is inherently and openly wrongful and utterly repug-

nant to the statute, and the law. Petitioner quotes from the enclosed transcript (R. 48):

50 Am. Jur. 495, 500 Statutes, Section 478.

> " . . . The courts have evolved a strict rule of construction against a retrospective operation and indulge in the presumption that the legislature intended statutes or amendments thereof, enacted by it to operate prospectively only, and not retroactively —. It is especially true that the statute or amendment will be regarded as operating prospectively only, where it — would destroy a vested right."

The Court of Claims has accepted the Amendment as it stands, in defiance of the Act, its history, and in disregard to and in reversal of every related opinion that has ever been handed down by this Court (R. 39, 40, 47, 48).

CONCLUSION

For the reasons advanced above, this Court is respectfully requested to grant a writ of certiorari herein.

Respectfully submitted,

HENRY R. CARR
Counsel for Petitioner
1440 N. W. 14 Avenue.

APPENDIX

Saving Section 519, 63 Stat. 834.

Title 37, USCA, Section 318,

> "SAVING PROVISION RELATING TO MEMBERS AND FORMER MEMBERS RECEIVING RETIREMENT PAY ON *OCT. 12, 1949*
> "Any member or former member of the uniformed services or any person entitled to the rights, benefits, and privileges of a member or former member of the uniformed services, — who on *October 12, 1949*, is receiving or is entitled to receive retired or retirement pay pursuant to any provision of law, shall, notwithstanding the provisions of this chapter, be entitled to continue to receive or shall continue his entitlement to receive that retired or retirement pay which such member or former member is entitled to receive under any provision of law in effect on the day preceding *October 12, 1949*." Emphasis supplied

Saving Section 520, 63 Stat.

Title 37, USCA, Section 319:

> "SAVING PROVISION RELATING TO LAWS PROVIDING FOR PAY REPEALED BY THIS CHAPTER.
>
> "Any provision of law which, on *October 12, 1949*, entitles any person to be retired, to receive pay, retired pay, retirement pay, or retainer pay, or other monetary benefits, and which is directly repealed, impliedly repealed, or amended by the

provisions of this chapter, shall, if the entitlement of such person to such retirement pay, retired pay, retainer pay, or other monetary benefits is saved by the provisions of this chapter, *be continued in full force and effect for such entitlement and for such a time as such entitlement may exist.*" Emphasis supplied

The closing chapter of the Career Compensation Act, Section 533, states:

"Section 515 of this Act shall *become effective on the date of enactment of this Act.*" Emphasis supplied

PROVISION TO RETAIN PRESENT COMPENSATION

Sec. 515. (a) No member serving on active duty on the effective date of this Act shall— suffer any reduction by reason of this Act in the total compensation which he is entitled to receive under any provision of law in effect on the day immediately preceding such effective date— provided—the provisions of this subsection shall cease to apply—

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. 1042

JULIAN G. CARR

Petitioner

vs.

THE UNITED STATES

Respondent

Supplement to Appendix of Petition for Writ of Certiorari to the Court of Claims of the United States

---

HENRY R. CARR
1440 N. W. 14th Avenue.
Counsel for Petitioner

IN THE UNITED STATES COURT OF CLAIMS

No. 142-64

JULIAN G. CARR

v.

THE UNITED STATES

ORDER

This case comes before the court on defendant's motion and plaintiff's cross-motion for summary judgment. Upon consideration thereof, together with the opposition thereto, oral argument of counsel, and the briefs of the parties, it is concluded that plaintiff's claim does not fall within either Section 415 of the original Career Compensation Act of 1949, or Section 415 of the Act as amended, and plaintiff is therefore not entitled to recover and

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, plaintiff's cross-motion for summary judgment is denied and plaintiff's petition is dismissed.

BY THE COURT

Wilson Cowen
Chief Judge

JUNE 18 1965

IN THE UNITED STATES COURT OF CLAIMS

349-57	ACME PROCESS EQUIPMENT CO., ETC.	
420-57	JOHN HIX AWTRY	
274-59	NELLO L. TEER COMPANY	
357-59	FOOD MACHINERY AND CHEMICAL CORPORATION	
493-59	KENNECOTT COPPER CORPORATION	
46-60	HUGOTON PRODUCTION COMPANY	
398-60	IOWA SOUTHERN UTILITIES COMPANY	v.
192-61	FRANK CAMERO	
321-61	CHARLES R. NESBITT	THE
464-61	ANTHONY P. MILLER, INC.	
323-62	KARL F. KNETSCH AND EVA FAY KNETSCH	UNITED
146-63	ARLEN DALE KEELING	STATES
167-63	MORAN BROS., INC.	
314-63	JOHN J. HOLDEN	
43-64	JAMES EDGAR MOTTO	
142-64	JULIAN G. CARR	
376-64	FLORENCE W. OLESON, SURVIVING SPOUSE AND BENEFICIARY OF VICTOR L. OLESON, DECEASED	
10-65	OLIN MATHIESON CHEMICAL CORP.	

ORDER

These cases come before the court on motions and petitions for rehearing, reconsideration, relief from final

judgment, modification of judgment, modification of opinion, motion for new trial and for further relief under Rules 68 and 69 of the Rules of this court and, on consideration thereof,

IT IS ORDERED this 15th day of October, 1965, that said motions be and the same are denied as follows:

349-57 Acme Process Equipment Co., etc. Defendant's motion.

420-57 John Hix Awtry. Plaintiff's motion.

274-59 Nello L. Teer Company. Plaintiff's motion.

357-59 Food Machinery and Chemical Corporation. Defendant's and plaintiff's motions.

493-59 Kennecott Copper Corporation. Defendant's motion.

46-60 Hugoton Production Company. Plaintiff's motion.

398-60 Iowa Southern Utilities Company. Defendant's motion.

192-61 Frank Camero. Plaintiff's motion.

321-61 Charles R. Nesbitt. Plaintiff's motions.

464-61 Anthony P. Miller, Inc. Plaintiff's motion.

323-62 Karl F. Knetsch and Eva Fay Knetsch. Plaintiff's motion.

146-63 Arlen Dale Keeling. Plaintiff's motion.

167-63 Moran Bros., Inc. Defendant's motion.

314-63 John J. Holden. Plaintiff's motion.

43-64 James Edgar Motto. Defendant's motion.

142-64 Julian G. Carr. Plaintiff's motion.

376-64—Florence W. Oleson, Surviving Spouse and Beneficiary of Victor L. Oleson, Deceased. Defendant's motion.

10-65 Olin Mathieson Chemical Corp. Defendant's petition.

BY THE COURT

Wilson Cowen
Chief Judge

Justice Reed (Ret.), sitting by designation, participated in the consideration and decision of case No. 46-60.

Senior Judge Jones participated in the consideration and decision of case Nos. 357-59 and 46-60.

Senior Judge Whitaker participated in the consideration and decision of case Nos. 274-59 and 323-62.

The Chief Judge took no part in the consideration and decision of case Nos. 46-60 and 323-62.

Judge Collins took no part in the consideration and decision of case Nos. 357-59 and 46-60.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1042

JULIAN G. CARR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. Petitioner, while on active duty with the United States Air Force, was hospitalized on October 10, 1949, and found to be suffering from a liver disease. The condition led to his retirement from the service on June 30, 1950, with a disability rating of 30 percent and, as provided for in the Career Compensation Act of 1949, 63 Stat. 802, with retirement pay equal to 30 percent of his base pay (Pet. 4). He brought this action in the Court of Claims, asserting that the Compensation Act gives him the right to elect to have his disability retirement pay computed on the basis of laws in effect prior to its enactment and that, therefore, he is entitled to receive retirement pay equal to 75 percent of his base pay.

211-666—66

The relevent provision is Section 415 of the Career Compensation Act. As originally enacted, the Section provided (63 Stat. 825):

> Any member, who, *on the effective date of this Act,* is a hospital patient and who within six months of the effective date of this Act is retired as a result of a physical disability growing out of the injury or disease for which he was hospitalized as of the date of enactment of this Act, may elect to receive retirement benefits computed under the laws in effect on the date preceding the date of enactment of this Act. [Emphasis added.]

As amended in 1950, the Section provides (64 Stat. 158):

> Any member who, *on October 1, 1949,* was a hospital patient and who, prior to January 1, 1951, is retired as a result of a physical disability growing out of the injury or disease for which he was hospitalized, may elect to receive retirement benefits computed under the laws in effect on September 30, 1949. [Emphasis added.]

The "effective date" of the provision here relevant is, as Section 533(a) of the Act specifies,[1] October 1, 1949. The Act was signed into law on October 12, 1949.

---

[1] 63 Stat. 841:

> Except as provided in subsections (b) and (c) of this section, [not relevant here] this Act shall become effective on October 1, 1949, and no pay, allowances, or benefits provided herein shall accrue to any person for any period prior thereto.

2. On the basis of these uncontested facts, the Court of Claims ruled that petitioner—who was not a hospital patient on October 1, 1949—has no right of election, under Section 415, either as originally enacted or as amended in 1950.[2] Since the only issue presented is the narrow one of the effective date of the Career Compensation Act, a matter of little prospective application or importance, and because the decision of the Court of Claims is plainly correct, there is no occasion for review by this Court.

a. Petitioner is not eligible to elect under Section 415 because he was not, as that section required him to be, a hospital patient on the effective date of the Act, October 1, 1949. That this is the relevant date for the section, both as originally enacted and as amended, cannot reasonably be disputed.[3] Congress specified in the Act itself that, except for two sections not here relevant, the Act "shall be effective on October 1, 1949." See Section 533(a), *supra*, n. 1. This is to be contrasted with Congress' specification that the effective date of one of the excepted sections was to be "the date of enactment of this Act." See Section 533(b), 63 Stat. 841. Thus Congress was aware that "the date of enactment" might be other than October 1. It is significant that the provision here relied upon by petitioner, Section 415, was inserted into the statute after the dichotomy between the "effective date"—*i.e.*, October 1—and the "date

[2] As the petition does not contain the court's decision, we have reproduced it as an appendix to this memorandum.

[3] Indeed, in the Section as amended, the date of October 1, 1949, is specifically stated. See 64 Stat. 158, *supra*.

of enactment" had been made clear in the bill and in the legislative reports.[4] The provision's sponsor, Senator Butler, was undoubtedly aware of this differentiation, and he carefully maintained it, referring to the "date of enactment" in some places but clearly specifying that, in order to be entitled to elect retirement benefits under the old laws, a serviceman had to be a hospital patient "on the effective date."

b. Petitioner argues, however, that with the enactment of the Compensation Act on October 12, 1949—on which date he was a hospital patient—certain rights provided under the laws replaced by the new legislation were "saved" and became "vested" (Pet. 9–10). He places particular reliance on Section 520, 63 Stat. 834, which provides:

> Any provision of law which, on the date of enactment of this Act, entitles any person to be retired, to receive pay, retired pay, retirement pay, or retainer pay, or other monetary benefit, and which is directly repealed, impliedly repealed, or amended by the provisions of this Act, shall, if the entitlement of such person to such retirement, pay, retired pay, retirement pay, retainer pay, or other monetary benefit is saved by the provisions of this Act, be continued in full force and effect for

[4] Section 415 was a last minute amendment made on the floor of the Senate on September 26, 1949. See 95 Cong. Rec. 13259 (1949). The House and Senate Reports, both mentioning an effective date of October 1, 1949, and an unspecified "date of enactment" (see S. Rep. No. 733, 81st Cong., 1st Sess. 37 (1949); H. Rep. No. 779, 81st Cong., 1st Sess. 45 (1949)), had already been filed.

such entitlement and for such a time as such entitlement may exist.

It is apparent, however, that Section 520 saved provisions of the old law only for those whose entitlement thereto was preserved under the new law. As we have shown, petitioner's entitlement was not so preserved.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

MARCH 1966.

APPENDIX

In the United States Court of Claims

No. 142–64

JULIAN G. CARR

v.

UNITED STATES

Order

This case comes before the court on defendant's motion and plaintiff's cross-motion for summary judgment. Upon consideration thereof, together with the opposition thereto, oral argument of counsel, and the briefs of the parties, it is concluded that plaintiff's claim does not fall within either Section 415 of the original Career Compensation Act of 1949, or Section 415 of the Act as amended, and plaintiff is therefore not entitled to recover and,

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, plaintiff's cross-motion for summary judgment is denied and plaintiff's petition is dismissed.

By the Court:

WILSON COWEN,
Chief Judge.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1965

No. 1042

JULIAN G. CARR

Petitioner

vs.

THE UNITED STATES

Respondent

Motion For Rehearing on Petition for Writ of Certiorari to the Court of Claims of the United States

---

HENRY R. CARR
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Counsel for Petitioner

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Petitioner cannot believe that his cause has been made clear to this Court. He was denied below on abstract questions since explained away and no longer in issue. It is now agreed that "— *the only issue presented is the narrow one of the effective date of the Career Compensation Act, a matter of little prospective application or importance*—".[1] He is unaware of degrees in retroactivity or that an act might be acceptable which is only a little retroactive, and only wrongs a single individual.

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[1]Page 3, government's memorandum in answer to petition for writ of certiorari.

Petitioner has not objected to Amendatory Section 415 because it is harsh and oppressive, or because it is patently unjust and discriminatory. Congress most surely has power to write such an act. As the only known member of the military services to ever suffer retroactively under a public law, he prays in his final appeal, that this Court will consider the entire Act. He respectfully submits that Amendatory Section 415 *cannot reflect the true Congressional Purpose.* Every effort has been made to not waste this Court's time.

The "effective date" of the Act in question is a time carefully removed, and one distinctly set apart from "the date of enactment". The principal function of the statute was to provide new pay increases exceeding an annual 300 million dollars, and Congress knew from the bill's inception that these new benefits must have an "effective date" on the *first of a month. This is always essential for budget and fiscal demands.*

Calendar dates were unknown during the two years while the bill was under preparation, but every joint reference in the body of the Act *compels* the "effective date" to *follow* "the date of enactment". Congress had believed that normal procedure would be observed; that the bill would first be enacted into law and that the new *increases would later start,* and have an "effective date" *on the first of a future month.*

In the closing instructions of Section 533, *Congress suddenly reversed the order of the "effective date" in its former relation to "the date of enactment", and "October 1, 1949" served no purpose other than to hasten the start*

of unaccrued pay and to benefit every member of the military services. If a term is to have a constant meaning, *the retroactive date of "October 1, 1949" cannot thereafter replace the statutory reference to an "effective date", which when written, was intended to be prospective and follow "the date of enactment".*

The saving clauses make no less than *fifteen* references to "the date of enactment", *a prospective date* that protected every existing or prior law *until midnight on "October 12, 1949", the day of the Act's approval.*

Admitted confusion in the USC is identical to the construction under protest:

> 63 Stat., 831. Sec. 515(b) states in part:
>
> "Any member who, on the effective date of this Act, is serving in an enlistment contracted prior to the date of enactment of this Act, or any member whose entitlement terminated in the period between the date of enactment and the effective date of this Act, both dates inclusive — "
>
> Translation in USC Title 37, 315(b)
>
> "Any member who, on October 1, 1949, is serving in an enlistment contracted prior to October 12, 1949 (or any member who today is serving in an enlistment contracted prior to next week) or any member whose entitlement terminated in the period between *October 12, 1949, and October 12, 1949, both dates inclusive—".*

A footnote to the latter error states:

"So in original. *Probably* should read 'October 12, 1949 and October 1, 1949' ".

This is *not* "So in original". The error shown above and the inept language of Amendatory Section 415, have stemmed from the same cursory attention to Section 533 wherein "October 1, 1949" is unavoidably restricted to "pay, allowances or benefits", and every "pay entitlement"—"pursuant to any provision of law" is saved until "the date of enactment" or October 12, 1949, a date then unknown:

From Section 533 — last chapter of Act—

"(a) *Except* as provided in subsections (b) and (c) of this section, this Act shall take effect on October 1, 1949, *and no pay allowances or benefits provided herein shall accrue to any person for any period prior thereto.*

"(b) *Section 515 of this Act shall become effective on the date of enactment of this Act*".

"GENERAL SAVING SUBSECTION 515(a)" (legislative historical title) is "A PROVISION TO RETAIN PRESENT COMPENSATION". By express order it becomes effective on "the date of enactment":

Statutes 63, 831, Section 515(a)

"No member serving on active duty—shall—suf-

fer any reduction by reason of this Act in the total compensation which he is entitled to receive under any provision of law—provided—the provisions of this subsection shall cease to apply—"

The preceding clause embraces the whole Act, and confirms the explicit text of two saving clauses which follow. The disturbance of all antecedent laws is prohibited prior to "October 12, 1949".

"Saving Section 519, 63 Stat. 834.

"Title 37, USC, Section 318:

"SAVING PROVISION RELATING TO MEMBERS AND FORMER MEMBERS RECEIVING RETIREMENT PAY ON *OCTOBER 12, 1949*

"Any member or former member of the uniformed services—who on *October 12, 1949*, is receiving or entitled to receive retired or retirement pay *pursuant to any provision of law, shall, not withstanding the provisions of this chapter*, be entitled to continue to receive or shall continue his entitlement to receive that retired or retirement pay which such member or former member is entitled to receive under any provision of law in effect on the day preceding *October 12, 1949*". Emphasis added

"Saving Section 520, 63 Stat.

"Title 37, USC, Section 319:

"SAVING PROVISION RELATING TO LAWS PROVIDING FOR PAY *REPEALED* BY THIS CHAPTER.

"Any provision of law which, on *October 12, 1949* entitles any person to be retired, to receive pay, retired pay, retirement pay, or retainer pay, or other monetary benefits, and which is directly repealed, impliedly repealed, or amended by the provisions of this chapter, *shall, if the entitlement of such person to such — is saved by the provisions of this chapter, be continued in full force and effect for such entitlement and for such a time as such entitlement may exist*". Emphasis added

Section 415 preserved a law in effect since 1861 that gave an automatic 75 percent pay to every commissioned officer who was retired from physical disability. It cannot be read with meaning or coherence unless the reference to the "effective date" indicates a time following "the date of enactment"—both prospective dates. The verb tenses and sentence structure *compel* this meaning, and it will be noted that the present tense "*is*", attends the "effective date"—"growing out of the injury or disease for which he *was* hospitalized as of the date of enactment of this Act". *Congress made no distinction between officers who shared an identical status on October 12, 1949.*

"63 Stat. 825; Sec. 415.

"Any member who, on the *effective date* of this Act, *is* a hospital patient and who within six months of the effective date of this Act is retired as a result of a physical disability *growing out of the injury or disease for which* he *was* hospitalized as of *the date of enactment of this Act*, may elect to receive retirement benefits computed under the laws in effect on *the date preceding the date of enactment of this Act.*" Emphasis supplied.

The legislative history, always avoided by the government, has jointly discussed Section 415 and the Amendment. Its plain text has been completely disregarded: (U. S. Code Cong. Service, 1950, P.2296)

"Section 415 of the Career Compensation Act provided a period of *six months, following the date of enactment*, during which members of the uniformed services who were hospital patients *on the date of enactment* had the right to elect retirement benefits computed in accordance with laws in existence *prior to the Career Compensation Act*, if such members were retired for physical disability *during the six months immediately following the date of enactment.*

"Due to the fact that regulations by other sections of Title IV of the Career Compensation Act *were not promulgated until after the six-month period had expired*, particularly insofar as they

pertain to the payment of retired pay to non-regular personnel, *such persons were not able to exercise their election prior to the expiration date.* "The proposed legislation, therefore, would *extend the election date to December 31, 1950,* but would not create any other new rights or benefits and, in all probability, will not enlarge the number of personnel entitled to right of election."

On September 26, 1949, the late Senator Hugh Butler, upon introduction of the amendment which was to become the original Section 415, stated in part:

> "The purpose—is to give an officer—an opportunity to make his final settlement either under the terms of the *present law* [the old law] or under the terms of the new act." (Cong. Rec. Vol. 95, Part 10, P. 13259)

On September 27, 1949, President Johnson, then a Representative, stated before the House:

> "It was wise for us to accept the Senate amendments, so the bill may become a law on October 1, 1949, *the date fixed in the bill for the increases to take effect.*" (Cong. Rec. 1st Session, 81st Congress, p. 13259, Vol. 95, Part 10.)

The disparity between petitioner's injury and his 30 percent compensation is not relevant to the issue. He was hospitalized prior to the Act's approval, *on October 10, 1949* and his survival in great question for days thereafter.

With "total" and "permanent" disability, he was denied an election under the old law and retired on June 30, 1950, and under strict and isolated adherence to the letter of Amendatory Section 415.

"Amendatory Section 415, 37 USC 285

"HOSPITAL PATIENTS ON *OCT. 1, 1949* who SUBSEQUENTLY RETIRE; *ELECTION OF BENEFITS*

"Any member who, on October 1, 1949, was a hospital patient and who, prior to January 1, 1951, is retired as the result of a physical disability growing out of the injury or disease for which he was hospitalized, may elect to receive retirement benefits computed under the laws in effect on September 30, 1949."

The foregoing Amendment has no meaning outside its own text. It ignores two references in Section 415 to "the date of enactment" and in violation to the most forcible and constant opinions known to the law, it has construed a statute for the past, "October 1, 1949", while making a rule for the future, "January 1, 1951".

Saving Section 519 forbids the disturbance of any existing law prior to "October 12, 1949". Saving Section 520 has no purpose other than to assure *the prospective and vested nature of this very claim;* it prohibits the disturbance of any law which had been saved from repeal on "October 12, 1949". Saving Section 515(a) forbids all retroactive loss under the Act.

Every related word of the Act, its history and the Congressional Record have observed the strict rules of law against retroactive intent. Amendatory Section 415 generously extended for nine months into the future, an old law that was generously saved from repeal on "October 12, 1949". It could not have been repealed earlier than this date on which the Act was approved.

Petitioner prays that the conflicts will be reconciled against the retroactive Amendatory Act, and in favor of the prospective instructions of the Career Compensation Act; that this motion for rehearing on his petition for writ of certiorari will be granted by this Honorable Court.[2]

Respectfully submitted,

Henry R. Carr

HENRY R. CARR
1440 N.W. 14th Avenue
Miami, Florida
Counsel for Petitioner

CERTIFICATE

I hereby certify that the foregoing petition for rehearing is presented in good faith, and not for delay; that said petition is restricted to the grounds above specified.

Henry R. Carr

HENRY R. CARR
Counsel for Petitioner

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[2]A reproduction of the Court's decision has been reproduced in the Appendix.

APPENDIX

In the United States Court of Claims

No. 142-64

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Order

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IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, plaintiff's cross-motion for summary judgment is denied and plaintiff's petition is dismissed.

By the Court:

WILSON COWEN,
Chief Judge.